

ORDINANCE NO. 2009-__

**AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING
CHAPTER 9.22 TO THE NEVADA CITY MUNICIPAL CODE PROHIBITING
MEDICAL MARIJUANA DISPENSARIES**

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use marijuana under limited, specific circumstances; and

WHEREAS, on January 1, 2004, the provisions of Senate Bill 420 ("SB 420") went into effect clarifying the scope of the Compassionate Use Act of 1996 and allowing cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420,

WHEREAS, certain cities, including nearby Colfax, have permitted medical marijuana dispensaries within their jurisdictions in reliance upon the Compassionate Use Act of 1996 and SB 420, but neither Proposition 215 nor SB 420 authorizes or requires medical marijuana dispensaries, especially those operated as commercial outlets for profit, to be allowed within all jurisdictions; and

WHEREAS, the federal Controlled Substances Act, 21 U.S.C. §841, makes it unlawful to manufacture, distribute, dispense or possess marijuana and the United States Supreme Court in Gonzales v. Raich, 125 S. Ct. 2195 (2005), ruled that the Controlled Substances Act applies even in states such as California which have medical marijuana laws; and

WHEREAS, an October 19, 2009, directive from the U.S. Department of Justice instructed federal authorities not to focus federal investigative and prosecutorial resources on activities in clear and unambiguous compliance with state laws providing for medical use of marijuana, but it also provided that this resource allocation guidance allocation did not "legalize" marijuana or create a legal defense to a violation of the controlled Substances Act and that prosecution of commercial enterprises unlawfully marketing and selling marijuana for profit continues to be a federal enforcement priority; and

WHEREAS, Nevada City is a small community with no appropriate location available for a medical marijuana dispensary and the legality of such an operation is in question; and

WHEREAS, prohibiting medical marijuana dispensaries in Nevada City will not preclude qualified individuals and their primary caregivers from obtaining marijuana

from outlets in other jurisdictions or through cooperatives in clear and unambiguous compliance with state laws;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nevada City as follows:

There is hereby added to the Nevada County Municipal Code, Chapter 9.22 which is to read as follows:

Section 9.22.01 Definitions

For the purpose of this chapter, certain terms and words are defined as set out in this section:

“Medical Marijuana Dispensary” means any facility or location where medical marijuana is made available, distributed, sold, transmitted, given and/or otherwise provided to other persons on an ongoing basis, excluding any of the following facilities: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, or a residential hospice, or home health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such facility complies strictly with applicable laws including, but not limited to Health and Safety Code §§ 11362,5 et seq,

“Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or any combination thereof in whatever form or character.

Section 9.22.02 Medical Marijuana Dispensaries Prohibited

Except as hereinafter otherwise provided, it shall be unlawful for any person to operate and operation of a Medical Marijuana Dispensary shall not be allowed anywhere within the municipal boundaries of Nevada City.

PASSED AND ADOPTED this ___ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Reinette Senum, Mayor

ATTEST:

My documents
Ordinance No. 2009 --, Marijuana Dispensaries